

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

DEMZA MASONRY, LLC

Respondent

:
:
:
: No. 19-1978
:
: Board Case Nos.:
: 22-CA-208778
: 22-CA-220318
:
:
:

UNOPPOSED MOTION TO CORRECT JUDGMENT

To the Honorable, the Judges of the United States
Court of Appeals for the Third Circuit:

The National Labor Relations Board (“the Board”), by its Acting Deputy
Associate General Counsel, respectfully moves the Court to enter a corrected
judgment and order and shows as follows:

1. On January 18, 2019, Administrative Law Judge Robert A. Giannasi
issued a decision in Board Case Nos. 22-CA-208778 and 22-CA-220318, finding
that Demza Masonry, LLC (“Demza”) had violated the National Labor Relations
Act and recommending that an order be issued requiring that Demza cease and
desist from the unfair labor practices found and take certain affirmative action to
remedy those unfair labor practices.

2. In the absence of any exceptions to the administrative law judge's decision, on March 4, 2019, the Board issued an order adopting the judge's findings and conclusions and directing Demza to take the action set forth in the judge's recommended order.

3. On April 29, 2019, the Board filed an application for summary entry of a judgment enforcing the Board's order and included a proposed judgment with its filing. The case was docketed as No. 19-1978.

4. On May 22, 2019, the Court (Circuit Judges Chagares, Restrepo, and Scirica) entered a judgment enforcing the Board's order. Mandate issued that same day.

5. The Board has recently discovered a typo in the judge's recommended order, which the Board adopted and this Court enforced. The order's reinstatement provision inadvertently includes the names of two individuals (Robert Weeks and Michael O'Leary) who were not involved in the instant case.

6. Accordingly, the Board requests that the Court enter the attached corrected judgment and order, which omits the mistaken reference to Robert Weeks and Michael O'Leary.

7. The Board has contacted counsel for Demza, who does not oppose this motion.

WHEREFORE, the Board respectfully requests that the Court grant this motion and enter the accompanying corrected judgment and order.

s/ David Habenstreit

David Habenstreit

Acting Deputy Associate General Counsel

NATIONAL LABOR RELATIONS BOARD

1015 Half Street, S.E.

Washington, D.C. 20570

(202) 273-2960

Dated in Washington, D.C.
this 12th day of September, 2019

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	:	
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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 388 words of proportionally spaced, 14-point type, and the word processing system used was Microsoft Word 2016.

s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-2960

Dated in Washington, D.C.
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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2019, I electronically filed the Board's Unopposed Motion to Correct Judgment and the attached Corrected Judgment Enforcing an Order of the National Labor Relations Board with the Court for the United States Court of Appeals for the Third Circuit using the appellate CM/ECF system. I certify the foregoing document was served on all the parties or their counsel of record through the CM/ECF system.

s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-2960

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**CORRECTED JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Demza Masonry, LLC, its officers, agents, successors, and assigns, enforcing its order dated March 4, 2019, in Case Nos. 22-CA-208778 and 22-CA-220318, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent Demza Masonry, LLC, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

BY THE COURT

Circuit Judge

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

DEMZA MASONRY, LLC

ORDER

Demza Masonry, LLC, its officers, agents, successors and assigns, shall

1. Cease and desist from
 - (a) Discriminatorily discharging or otherwise disciplining employees for their union affiliation or union activities.
 - (b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - (a) Offer reinstatement to Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio to their former positions, or, if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges to which they would have been entitled had they not been discriminated against.
 - (b) Make Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this order.
 - (c) Compensate Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio for the adverse consequences, if any, of receiving a lump backpay award, and file with the Regional Director of Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.
 - (d) Compensate Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings.
 - (e) Within 14 days from the date of this Order, remove from its files any

reference to the unlawful discharge of Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio, and, within 3 days thereafter, notify the above individuals in writing that this has been done and the discharges will not be used against them in any way.

- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post, at its Whitehouse Station, New Jersey facility, as well as all of its construction job sites, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places at the above locations, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent communicates with employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 27, 2017.
- (h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT discriminatorily discharge or otherwise discipline employees because of their affiliation with or activities on behalf of Local 4, Bricklayers and Allied Craftworkers' Administrative District Council of New Jersey or any other union.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights listed above.

WE WILL offer reinstatement to Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio to their former positions, or if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges to which they would have been entitled had they not been discriminated against.

WE WILL make Jeff Dunleavy, John Smith, Jose Hernandez, and Marcello Ligerio whole, with interest, for any loss of earnings and other benefits they suffered as a result of our discrimination against them.

Demza Masonry, LLC

(Employer)

Dated: _____ By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether

employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov

20 Washington Place, 5th Floor, Newark, NJ 07102-3110
(973) 645-2100, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/22-CA-208778 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OF COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (862) 229-7055.